

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 212 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

1 Yes

2 to 5 No

COMMISSIONER OF INCOME-TAX

Versus

HARSH FAMILY TRUST

Appearance:

MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.R.DAVE

Date of decision: 09/02/99

ORAL JUDGEMENT (per J.N. Bhatt, J.)

By this reference, the Income Tax Appellate Tribunal, Ahmedabad Bench 'C', has referred the following two questions of law for our opinion.

"1. Whether, on the facts and in the circumstances of the case, and on a true interpretation of clauses 8(a) and 8(b) of the Trust Deed, the conclusion of the Tribunal that the shares of the beneficiaries are determinate and that the trust is not a discretionary trust is sustainable in law?

2. Whether the Tribunal is right in coming to the conclusion that the assessee trust is not liable to be taxed?"

2. The respondent-assessee is a trust. The ITO, in the original assessment, recorded under sec. 143(3) of the Income-tax Act, 1961, for the Assessment Years 1974-75 to 1978-79, held that the shares of the beneficiaries of the trust were determinate and hence the income of the trust was eligible for exemption.

3. The assessment, however, came to be set aside by the Commissioner of Income-tax, by his order dated 24.8.1979, exercising his powers under sec. 263 of the I.T. Act, treating that order of the ITO as prejudicial to the Revenue and holding that the interpretation of clauses 8(a) and 8(b) of the Trust Deed propounded by the ITO was not correct. The appellate authority had followed the earlier decision while deciding the appeal, which also came to be confirmed by the Tribunal, by its order dated 6.7.1983.

4. Our attention was invited to the decision of this Court in CIT v. Tanvi Sajni Family Trust, 209 ITR 497. The aforesaid questions are, squarely, covered by our earlier decision and we find no reason or material on record to take a different view.

5. With the result, we answer both the questions in affirmative, that is, against the Revenue and in favour of the assessee. The reference stands disposed of accordingly with no order as to costs.

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